PROPERTY LAW

CASES AND MATERIALS

VOLUME II

Arnold Weinrib
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LANDLORD AND TENANT

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For a further discussion of the issue of early or wrongful repudiation of a lease by a lessee see the recent Supreme Court decision in **Keneric Tractor Sales Ltd. v . Langille et al. (1988) 43 D.L.R. (4th) 171.** In that case the lease in question involved agricultural equipment for which the lessee was given an option to purchase for its residual value at the expiration of the term. However, prior to that date, the lessee defaulted in its payment of rent, and the lessor subsequently repossessed the equipment, selling it to a third party, and suing the lessee for damages. In reaching the decision for the Court, Madame Justice Wilson applied the case of **Highway properties Ltd. v. Kelly, Douglas and Co. (1971), 17 D.L.R. (3d) 710, [1971] S.C.R. 562, [1972] 2 W.W.R. 28,** and the principles enunciated by Laskin J. therein. The Supreme Court held that the lessor was, in fact, entitled to damages on the ground that the same principles of damage apply to chattel as to land leases, and therefore in the case of substantial default, the lessor is permitted to terminate the lease and recover damages based on breaches of obligation which would have arisen later.

No case of this kind has ever been considered by the courts before, and I do not think the dicta in the previous cases should be read as excluding a case of this kind where a landlord seeks, by a course of intimidation, to "annul his own deed," to contradict his own demise, by ousting the tenant from the possession which the landlord has conferred upon her.

Secondly, if direct physical interference is a necessary element in the breach of covenant that element can be found in this case to a substantial extent, as I have already stated.

Next there is the question as to the amount of damages for the breach of the covenant. The sum adjudged was £100. There was, however, no allegation or evidence of any actual pecuniary or material damage suffered by the tenant. The only wrongful act alleged was a breach of covenant, that is, a breach of contract. No tort such as trespass or nuisance was alleged. An application at the trial for leave to amend by adding a claim in nuisance was refused. As the claim was only in contract and not in tort, punitive or exemplary damages could not properly be awarded: *Perera* v. *Vandiyar*.[10] Accordingly, there was no ground for awarding any damages other than nominal damages, which I would assess at 40s.

The reduction of the amount of damages does not affect the injunction, which was properly granted to restrain repetition of the breach of covenant found to have been committed. It is true, as Mr. Lester pointed out, that the particulars of claim failed to allege, as they should have done, that the landlord threatened and intended to continue or repeat the breach unless restrained by order of the court. This, however, was a minor defect in the pleading which should not affect the decision. The intention can and should be inferred from the evidence.

Malzy v. Eichholz, [1916] 2 K.B. 308, 85 L.J.K.B. 1132 (C.A.), involved the lease by the defendant to the plaintiff of a restaurant property, being part of a block of shops and offices held by the defendant. The defendant then let an adjoining property to a third party, who used them in a way creating a public nuisance for the plaintiff restauranteur. The Court held that the fact that the lessor (defandant) had not participated in or authorized the nuisance created by the third party meant that he was not in breach of the covenant for quiet enjoyment:

> there is no authority and no principle for holding a landlord liable under a covenant for quiet enjoyment—that is to say, that he has done anything which renders him liable to damages under the covenant in respect of quiet enjoyment—merely because he knows of what is being done and does not take any steps to prevent what is being done. There must be something much more than that.

Compare this with the result in Sampson v. Hodson-Pressinger, [1981] 3 All E.R. 710 (C.A.), reproduced in part infra.

In the recent case of McCall v Abelesz [1976] 1 All E.R. 727 (C.A.), the landlord's failure to pay the bills resulted in the supplies of electricity, gas and water being cut off. Lord Denning, M.R. referred to Kenny v Preen as an example of an established common law remedy for the tenant in such situations.

"Furthermore, I see no need to give any new civil remedy for harassment. As I understand it, the law already gives a perfectly good civil action for damages. In the present case, where the gas and electricity were cut off, the tenant could sue the landlord for breach of the implied term that he would supply the gas and electricity through the meters so long as the tenancy continued. I should have thought, too, that it would be a breach of the covenant for quiet enjoyment. This covenant is not confined to direct physical interference by the landlord. It extends to any conduct of the landlord or his agents which interferes with the tenant's freedom of action in exercising his rights as tenant: see Kenny v Preen, per Pearson L. J. . It covers, therefore, any acts calculated to interfere with the peace or comfort of the tenant, or his family.

. . .

"It seems to me, too, that the courts could grant an injunction to restrain any breaches: and this could be brought in the county court as ancillary to a claim for damages. Those civil remedies are sufficient to deal with most cases of harassment."

A landlord slapped a tenant's children and threatened the tenant and her children with physical violence. These events took place just outside the demised premises. Was there a breach of the implied covenant for quiet enjoyment?

See Hormidge v Magur [1947] 1 D.L.R. 415, [1946] 3 W.W.R. 668 (B.C.C.A.).

In Factory Footwear Outlet v. Taylor (1983), 41 Nfld & P.E.I.R. 91 (Nfld.Dist.Ct.), the landlord, Taylor, sent a notice to vacate to the tenants apparently in response to alleged breaches of covenant. The judge found no substantial evidence of breaches. The tenant argued that the notice to vacate constituted a breach of his covenant for quiet enjoyment. Riche, D.C.J. held that physical interference is required for breach of the covenant for quiet enjoyment. The sending of the notice was an annoyance but was not an actual interference.

Landlord's obligations are not necessarily restricted to the demised premises themselves. The tenant of a basement apartment in Fanjoy v. Gaston (1981), 127 D.L.R.(3d) 163 (N.B.C.A.), injured herself in a fall on a common staircase in the building, and brough an action against the defendant landlord for damages for personal injuries. The Court held that in leasing the apartment the landlord gave an "implied undertaking", or had an "implied contractual obligation", to keep the tenant's means of access to her apartment in reasonably safe condition.

The construction of a new building by the defendant landlord in the parking area of its shopping centre affected traffic to the detriment of the business of the plaintiff tenant in Langley's Ltd. v Lawrence Manor Inv. Ltd., [1960] O.W.N. 436 (H.C.). King J. held that the attachment of a plan to the lease which showed the original parking area was intended to confirm that this area would be available for parking. Hence, he found, the new construction did constitute a derogation from the property granted in the lease, so the plaintiff was entitled to damages.

This may be compared with the more recent case of Clark's-Gamble of Canada Ltd. v Grant Park Plaza Ltd., [1967] S.C.R. 614, 64 D.L.R.(2d) 570, 61 W.W.R. 472, where the Supreme Court of Canada affirmed the theory that for a landlord to allow competitive enterprises in neighbouring premises is not a derogation from his grant. Protection from competition would involve a contractual term which must be agreed to in specific terms by the parties to the lease.

quately and sufficiently heated; and, furthermore, I think that there is nothing in the fact that the case is one between landlord and tenant to render the law upon which I am acting inapplicable. *De Lassalle* v. *Guildford*, [1901] 2 K.B. 215, determines that a tenant can sue upon a collateral verbal warranty, and puts an end to the suggestion in earlier cases that there can be no suit on a warranty unless it is in the lease. *A fortiori*, there can be an action upon a collateral contract such as this.

Nor does the Statute of Frauds afford any answer, even if pleaded—and here it is not: for it is laid down in Halsbury's Laws of England, vol. 7, p. 383, that where there are two distinct agreements, one of which is and the other is not within the statute, the promise which is not required to be in writing to be within the statute may be enforced, even though it is not evidenced by a writing.

[Plaintiff was awarded $750 damages.]

In Duke of Westminster and Others v. Guild (1984), 3 All E.R. 144 (English C.A.), a section of drain, situated under the landlord's private road and unknown to either the landlord or the tenant at the time of the contract, became blocked. The contract stipulated a covenant for repair upon the tenant; there was no corresponding obligation placed upon the landlord. Nevertheless, the tenant argued on the grounds that the landlord should bear the cost of repair: (i) on the true construction of the contract, there was an implied obligation on the landlord to keep in repair the drain under his portion of land; (ii) even if there was no implied obligation, the landlord is under a duty of care to repair the drain.

The court held that the tenant was solely liable for the cost of repair. For commercial premises, there is no implied covenant to repair. An obligation may be implied in order to give 'business efficacy' to the agreement, or, in other words, to insert a term which both parties would have agreed to without hesitation. But in this case, the covenant was explicitly upon the tenant; in addition, the onerous nature of implying such a covenant and the fact that the law of easement would not require the landlord to perform the repairs - all of these factors negative an intention for the landlord to be obliged to repair.

With respect to the duty of care argument, this duty is applied when the landlord has in his/her control something ancillary to the premises demised then one must take proper care of this part. This is not applicable in the present case as it was the tenant's water which caused the damage and again, the law of easement denies an obligation to repair when the landlord does not cause the problem.

In the case of Temlas Apartments Inc. v Desloges (1980), 112 D.L.R.(3d) 185, 29 O.R.(2d) 30 (H.C.), the tenants (defendants) had vacated the premises in question and ceased to pay rent. At trial it was proven that the hot-water system of the apartment was contaminated with rust, sand, and iron filings; the tenants sought to rely upon a convenant contained in the lease obliging the landlord to maintain the premises "in a good state of repair, fit for habitation". On appeal Maloney J. examined theissue of whether the admitted breach of this covenant by the landlord was so fundamental to the contract of lease that the tenants could treat it as at an end. He held that this breach did not interfere with the fundamental purpose of the contract, and so the tenants' only remedy would have been in damages. Consequently, their liability for rent was upheld.

Note, however, that this does not preclude a tenant from applying under s.96(3) of the Landlord and Tenant Act for termination of the tenancy.

The House of Lords considered the duty of a landlord to repair common areas of an apartment building in Liverpool City Council v Irwin, [1976] 2 All E.R. 39, [1976] 2 W.L.R. 562. In that case the tenants complained of continual failure of elevators, insufficient lighting on stairs, and blockage of garbage chutes, inter alia. The contract of lease was not wholly in writing, so the question was what duties were to be placed upon the landlord. Lord Wilberforce denied that the Court would simply imply "reasonable terms" where the contract was itself silent, but agreed that the contract must be taken to include such conditions "as the nature of the contract itself implicitly requires, no more, no less; a test in other words of necessity". He held, as a consequence of the nature of the landlord-tenant relationship in this case, that the landlord must be understood to undertake a "reasonable" degree of care to repair these items. Similar concurring judgements were given by the other law lords.

The standard of reasonableness which is adopted in Irwin is discussed as well in O'Brien v Robinson, [1973] 1 All E.R. 583, [1973] A.C. 912 (H.L.). In that case the ceiling of the tenants' house fell in, injuring them, due to a defect unknown to either landlord or tenant. A covenant to keep the premises in repair by the landlord was implied into the lease by statute. It was held that this covenant did not place the landlord under a duty to remedy the defect in question unless and until he has "such information as would put a reasonable man upon inquiry as to whether works of repair are needed".

The O'Brien case as well drew a distinction between "latent" and "patent" defects in the premises, accepting the conclusion of the Court of Appeal in Morgan v Liverpool Corp., [1927] 2 K.B. 131, thereon. In the latter case it was held as a condition precedent to the liability of the landlord for harm due to a latent defect that notice thereof be given by the tenant. This extends the principle to include all defects, and not just those of a patent nature. In neither case is it decided expressly what would be the liability of the landlord for a defect of which he had notice from some source other than the tenant.

English legislation, is *O'Brien et al. v. Robinson*, [1973] A.C. 912. Since the earlier English cases, referred to in the Court below and by counsel here, the legislation had been amended in 1961. Section 32(1)(*a*) of the *Housing Act, 1961*, implied a covenant in every lease, imposing an obligation on the landlord to his tenant "to keep in repair" the structure of the demised premises. The House went back to the earlier authorities, and, although the wording in the *O'Brien* case was different from that of the earlier legislation they felt that the reasoning was apposite, and held that actual notice of any defect was required before imposing liability on the landlord.

In the instant appeal, it is not necessary for me to determine whether s. 96 is a complete code or not, nor indeed is it necessary for me to choose between interpretation two and three. Putting the plaintiffs' case at its highest, namely, that there is now a statutory duty of care imposed upon a landlord, the landlords here did not know of the latent defect nor, under the circumstances, could they reasonably be expected to have had knowledge of it. It is also common ground that no notice of the defect was given to the landlord if that were required.

In the circumstances we can find no failure on the part of the landlords to exercise reasonable care in providing and maintaining the rented premises in a good state of repair and fit for habitation.

Accordingly, the appeal will be dismissed with costs, if demanded.

Appeal dismissed.

You ought to consider the effect of The Queen v. Saskatchewan Wheat Pool, [1983] 1 S.C.R. 205, (1983), 143 D.L.R. (3d) 9 on the landlord's liability under s.96(1) of the Landlord and Tenant Act. The case is commented on by:

E.R. Alexander, "Legislation and Civil Liability: Public Policy and the 'Equity of the Statute'" (1984), 30 McGill L.J.(no.1) 1, and

A. Brudner, "Civil Liability For Breach of Statutory Duty Abolished" (1984), 62 Can. Bar Rev. 668.

(c) Illegality.

It has been argued that a lease will not be enforced if the object for which it was entered into is illegal. In Alexander v Rayson, [1936] 1 K.B. 169 (C.A.), the tenant and the landlord entered into two agreements: the first provided for the rental of a flat with certain services at £450 per year, and the second provided for largely similar services at £750 per year. This form of agreement was entered into by the landlord with a view to misrepresenting his rental revenue to the local City Council. Alleging that the landlord had failed to fulfill all of the terms of the second agreement, the tenant refused payment of £750; at trial, the tenant argued that, the agreement being made for an illegal purpose, the Court should not enforce it.

In rendering the judgement of the Court it was said:

> It is settled law that an agreement to do an act that is illegal or immoral or contrary to public policy, or to do any act for a consideration that is illegal, immoral or contrary to public policy, is unlawful and therefore void. But it often happens that an agreement which in itself is not unlawful is made with the intention of one or both parties to make use of the subject matter for an unlawful purpose, that is to say a purpose that is illegal, immoral or contrary to public policy. The most common instance of this is an agreement for the sale or letting of an object, where the agreement is unobjectionable on the face of it, but where the intention of both or one of the parties is that the object shall be used by the purchaser or hirer for an unlawful purpose. In such a case any party to the agreement who had the unlawful intention is precluded from suing upon it.

In this case a distinction was drawn between the enforcement of an illegal agreement per se and the passage of property under such an agreement. It was pointed out that, while the terms of an illegal agreement will not themselves be enforced, if property has passed thereunder the recipient will remain legally entitled to that property.

> In view of these various authorities it seems plain that, if the plaintiff had let the flat to the defendant to be used by her for an illegal purpose, he could not have successfully sued her for the rent, but the leasehold interest in the flat purporting to be granted by the lease would nevertheless have been legally vested in her. The result would have been that the defendant would be entitled to remain in possession of the flat without payment of rent until and unless the plaintiff could eject her without having to rely upon the lease or agreement. . . . if the plaintiff has by his conduct placed himself in the same position in law as though he had let the flat with the intention of its being used for an illegal purpose, he has no one but himself to thank for any loss that he may suffer in consequence.

It was held that the intent to use the agreements themselves in this case for an illegal purpose stood on the same footing as if the subject of the agreements was to be so used. Hence, the Court would not enforce the agreements, and the tenant was not liable for rent.

> Several times it has been said by Divisional Courts that it would be well for County Court Judges to give reasons for their decisions—and I think it right to state this once more.
>
> Appellate Courts are often placed at a great disadvantage from the want of a statement by the trial Judge of the reasons for his decision. The parties. too. should know what the grounds of the judgment are.
>
> NOTE: Since the above was written. my brother Middleton has called my attention to a Massachusetts case. *Delano* v. *Smith* (1910), 92 N.E. Repr. 500. which is much in point.

The restriction of use to which a tenant may put a property was considered in Policicchio v Phoenix Assurance Co. of Canada Ltd. (1977), 17 O.R.(2d) 118, 79 D.L.R.(3d) 453 (Dist. Ct.). The tenant in this case was absent from the rented premises for protracted periods; during one of these absences the furnace went off, resulting in frozen pipes and subsequent water damage to the property. Gould, D.C.J. held that user which allowed the premises to be "unsupervised during a very large part of most days" was not use in a "tenant-like manner", and so was a breach of that implied obligation. The damage which resulted from that lack of supervision was thus the liability of the tenant; the defence that such harm could have occurred even with more normal use was rejected.

The duty to use rented premises in a tenant-like manner was examined again in Barron v. Bernard (1972), 33 D.L.R. (3d) 371 (N.S.Co.Ct.). In determining the tenant's obligation in this regard, O'Hearn Co. Ct. J. adopts the description of Denning L.J. (as he then was) in Warren v. Keen, [1953] 2 All E.R. 1118, [1954] 1 Q.B. 15 (C.A.):

> It can, I think, best be shown by some illustrations. The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys, when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do the little jobs about the place which a reasonable tenant would do. In addition, he must, of course, not damage the house, wilfully or negligently; and he must see that his family and guests do not damage it: and if they do, he must repair it. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it.

Earl Bathurst v. Fine, [1974] 2 All E.R. 1160, [1974] 1 W.L.R. 905 (C.A.), involved the lease of an English country house to an American for a term of 20 years. The lease made special stipulations as to the maintenance of the house and grounds, and for certain improvements thereon to be made by the tenant. Lord Denning M.R. Notes:

> Those stipulations seem to me to show very clearly that the personal qualifications and suitability of Mr. Fine as a tenant were very much at the heart of this lease. It was fundamental that he would be there himself and that he would reside there himself and keep the house in a character fitting the estate.

The tenant departed for France for a time, and was then not permitted to re-enter England. His absence resulted in the operation of a clause of the lease which would forfeit the term; the tenant, admitting that he had no defence to the forfeiture itself, applied to the court for relief. Lord Denning M.R., with the other members of the Court concurring, said:

> This case is unusual because it concerns the personal qualifications of the tenant. How far are those to be taken into account in granting or refusing relief from forfeiture? In many cases it would not be a ground for refusing relief, but in some cases it is. For instance, we have been referred to section 146 (9) of the Act of 1925 (a new section in 1925 which was not in the Conveyancing Act 1881) which shows that there are leases, such as leases of agricultural land, where the personal qualifications of the tenant are of importance. It says:
>
> > "This section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest" in the case of five classes of lease, including "(*e*) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, . . ."
>
> That applies to forfeiture for bankruptcy or execution, but it seems to me that it is a legitimate consideration in other cases when relief is being considered. It applies in any case where the personal qualifications of the tenant are of importance for the preservation of the value or character of the property. This is essentially such a case. If the tenant is shown to be unsuitable personally, then relief can be refused. Here we have a man who is not a subject of this country but an American citizen. He has behaved in such a way that he is banned from entering this country and he is not a fit person to be a tenant of this property. The judge was quite right in refusing relief.

In Central Estates (Belgravia) Ltd. v. Woolgar (No.2), [1972] 3 All E.R. 610, [1972] 1 W.L.R. 1048 (C.A.), the elderly tenant sublet rooms of the premises concerned. He was as a result convicted of keeping a brothel, and the landlord sought to claim forfeiture of the lease on that ground. After the landlord had served notice of the forfeiture, a clerk in the landlord's office accepted rent from the tenant. The trial judge held that the acceptance of rent by the landlord's servant did not constitute waiver of the forfeiture, but exercised his discretion to grant relief from the forfeiture on a number of grounds. On the landlord's appeal and tenant's cross-appeal, the majority of the Court declined to interfere with the discretion of the trial judge in granting relief from forfeiture.

As regards the waiver of forfeiture, the Court held that an unequivocal act by the landlord consistent only with the continued existence of the lease would operate as a waiver; the fact that this waiver was not with the intent of the landlord, and this was known by the tenant, was seen to be immaterial. The acceptance of rent after notice of intent to forfeit the lease was such an unequivocal act.

lessor, will probably desire to terminate their tenancy of that other property. In my judgment that is a reason wholly dissociated from, and unconnected with, the bargain made between the lessor and the lessees under the lease that we have to consider, and is, from that point of view, a purely arbitrary and irrelevant reason. I agree with the judgment of Tomlin J., and that the appeal should be dismissed.

Appeal dismissed.

(1) L. R. 9 Ch. 151.
(2) Ante, p. 198.
(3) [1891] 1 Q. B. 417, 423.
(4) [1896] 2 Q. B. 241, 247.
(5) 8 Times L. R. 637.
(6) [1903] 2 Ch. 112.
(7) [1896] 2 Q. B. 241, 247.
(8) 8 Times L. R. 637.
(9) [1896] 2 Q. B. 241, 244.
(9) [1921] 2 Ch. 7.
(10) [1896] 2 Q. B. 241.

Compare the result in Houlder Bros. with the decisions in Windmill Place v. APECO of Canada Ltd. (1976), 72 D.L.R. (3d) 539, 16 N.S.R. (2d) 565 (N.S.S.C.A.D.), excerpted supra, and Coopers & Lybrand Ltd. v. Wm. Schwartz Contruction Co. Ltd. (1980), 116 D.L.R. 450 (Alta. Q.B.), infra.

In the case of Shields v. Dickler, [1948] 1 D.L.R. 809, the majority of the Ontario Court of Appeal held that the landlord's refusal of consent to assignment need not be based on the assignee's personality or the proposed user of the premises. The chief majority judgement in this case rejected the Houlder Bros. rule as being unnecessarily restrictive, while the dissent chose to follow that case.

A similar view of Houlder Bros. was taken in Pimms Ltd. v. Tallow Chandlers in the City of London, [1964] 2 All E.R. 145 (C.A.). In this case the landlord refused to consent to the assignment of the remaining thirteen years of a lease of restaurant premises to a group of developers, which refusal was based upon perceived injury which the landlord would suffer to his own financial interests in redevelopment of the area. The Court in the end held that this refusal did re te to the personality of the assignee, but in the course of their judgment considered whether the requirement, as presented in Houlder Bros., was necessary:

> *Re Gibbs and Houlder Brothers & Co., Ltd.'s Lease, Houlder Brothers & Co., Ltd.* v. *Gibbs* (16) has come in for some unfavourable comment in the House of Lords in *Viscount Tredegar* v. *Harwood* (17). This was in fact not a case of consent being withheld to assignment of leasehold property. It concerned a covenant which required the lessee to insure in the Law Fire Office or in some other responsible insurance office to be approved by the lessor. An assignee of the lease took out an insurance in the Atlas Company, whose responsibility was not questioned; but the lessor withheld his approval on the ground that for purposes of estate management he required the numerous houses on his estate to be insured in the same office. In an action for forfeiture of the lease by reason of breach of covenant, it was held that, on a true construction of the covenant, the primary obligation of the assignee was to insure in the Law Fire Office, and that the lessor had an absolute right to withhold his approval of an alternative office without entering on reasons. It was also held that, assuming that an implied term was to be imported into the contract, that the lessor's approval was not to be unreasonably withheld, the grounds of the appellant's disapproval were reasonable. VISCOUNT DUNEDIN said (18) referring to *Re Gibbs and Houlder Brothers & Co., Ltd.'s Lease, Houlder Brothers & Co., Ltd.* v. *Gibbs* (16):
>
> > " Further, I would like to say that, although it is unnecessary to consider whether that case was well decided, I am not inclined to adhere to the pronouncement that reasonableness was only to be referred to something which touched both parties to the lease. I should read reasonableness in the general sense, and if it was necessary—it is not so in the view already expressed—I would hold here that the appellants' reasons are eminently reasonable."

In Bickel v. Duke of Westminster, [1976] 3 All E.R. 801, [1976] 3 W.L.R. 805 (C.A.), the tenants proposed to assign their lease to a sub-tenant; as a consequence of such assignment and certain legislation, the assignee would become entitled to purchase the freehold estate at a price well below market. Not surprisingly, the landlord refused consent to such an assignment. The Court acknowledged that this reason was unrelated to the personality of the proposed assignee. In his judgement Orr L.J. said:

> In *Pimms Ltd.* v. *Tallow Chandlers Co.*, where it was the object of the proposed assignee, a development company, to take advantage of the nuisance value of the unexpired period of the lease so as to obtain participation with the landlords in a proposed redevelopment scheme, this court again distinguished *In re Gibbs and Houlder Brothers and Co. Ltd.'s Lease*, on the same basis as in the earlier cases, and held, further, that the proposed assignment was not a normal one but (in the words of Tucker L.J.) " pregnant with future possibilities."
>
> On these authorities, in my judgment, the withholding of consent in the present case was reasonable because it related to an attribute of the personality of the proposed assignee in that he would be eligible in due course to acquire the freehold by virtue of the Leasehold Reform Act 1967, and to the effect of the proposed assignment on the user and occupation of the premises, and to the relationship of landlord and tenant in regard to the subject matter of the demise, and because, on the evidence, the object of the refusal was based on views which a reasonable man could well entertain as to the proper management of the lessor's estate of which the premises in question form part.

The refusal of consent was therefore upheld.

A differently constituted Court of Appeal reached the same result in Norfolk Capital Ltd. v. Kitway Ltd., [1976] 3 W.L.R. 796. Houlder Bros. was not mentioned in the judgements, and Tallow Chandlers was neither cited in argument nor referred to by the Court.